

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS ) Master File No. 12-2311  
ANTITRUST LITIGATION ) Hon. Marianne O. Battani  
\_\_\_\_\_  
 )  
 )  
IN RE: All Auto Parts Cases )  
\_\_\_\_\_  
 )  
 )  
THIS RELATES TO: )  
All Auto Parts Cases )  
\_\_\_\_\_  
 )

## TELEPHONE CONFERENCE

BEFORE THE HONORABLE MARIANNE O. BATTANI  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Tuesday, July 25, 2017

## APPEARANCES:

SHAWN M. RAITER  
**LARSON KING, L.L.P.**  
Appearing on behalf of Dealership Plaintiffs

DAVID P. DONOVAN  
**WILMER HALE**  
Appearing on behalf of Defendants

To obtain a copy of this official transcript, contact:  
Robert L. Smith, Official Court Reporter  
(313) 964-3303 • rob\_smith@mied.uscourts.gov

1	<u>TABLE OF CONTENTS</u>	2
2	MATTER	PAGE
3	Telephone Conference.....	3
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1      Detroit, Michigan

2      Tuesday, July 25, 2017

3      at about 1:03 p.m.

4                    - - -

5                    (Court and Counsel present via telephone.)

6                    THE COURT: Hello. This is Judge Battani.

7                    MR. RAITER: Good afternoon, Your Honor.

8      Shawn Raiter for the auto dealers. And then we have a whole  
9      host of defense counsel, in-direct purchasers and  
10     direct-purchaser counsel on as well.

11     THE COURT: Okay. A whole host, how many?

12     MR. RAITER: That's a good question. It sounded  
13     like -- we didn't do a rollcall but I'm guessing 25 or so.

14     THE COURT: Okay. Well, let's just leave it, we  
15     don't need the names unless they speak. Okay.

16     MR. RAITER: Sure.

17     THE COURT: So if any of these other individuals,  
18     if you can hear me -- I'm hoping you can hear me, please if  
19     you wish to speak, just indicate by starting with your name.

20     I asked for this conference because I had a  
21     question and I didn't exactly know how to do it without  
22     notifying everybody because I didn't want to have any  
23     ex parte communications, but I do have a question on this  
24     unopposed motion concerning the claims of the -- excuse me,  
25     the allocution plan for the auto dealers.

1           My question is this, the -- it deals with the  
2 groups of dealerships and if you have a dealership group with  
3 a headquarter in the repealer state, then as I understand it,  
4 you are asking to draw in all of the dealerships which may be  
5 in non-repealer states, is that correct, in terms of --

6           MR. RAITER: Yes, assuming that the dealership  
7 group operates in the way that we described in the papers and  
8 that is that they have a centralized management vehicle  
9 acquisition structure financing structure, that is correct.

10           THE COURT: Right. Okay. I think you defined them  
11 in your papers as they provided direct financing, they  
12 maintained the liability for the non-payments to the OEMs,  
13 they controlled many aspects of the dealership operation, and  
14 headquarters were liable for their losses; is that right?

15           MR. RAITER: That's correct.

16           THE COURT: Okay. And I can understand that. The  
17 difficult part I'm having is there is -- it is the opposite,  
18 let's say the headquarter is in a non-repealer state and  
19 let's say it has two dealerships that are in repealer states,  
20 are those dealerships going to get -- can they file claims?

21           MR. RAITER: Again, it depends on a claim-by-claim  
22 basis, Your Honor. Some dealership groups have done it that  
23 way and they have taken the view that the dealerships that  
24 are in the non -- that are in the repealer states can submit  
25 a claim for only those vehicles in the repealer states, and

1 again the claims administrator, the special consultant, the  
2 allocution consultant that you approved, would look at those  
3 on a claim-by-claim basis, but in theory, yes, those  
4 dealerships in a group that is headquartered in a  
5 non-repealer state that acquired vehicles in a repealer state  
6 could submit claims for the repealer state dealerships.

7 THE COURT: Well, aren't those two things contrary?  
8 I mean, if you have headquarters in a repealer state, you are  
9 saying basically the injury took place, and I think you  
10 argued that in your pleading -- excuse me, in your motion  
11 that it had to do with the place of injury and the injury  
12 took place where the headquarters was. Well, how can it be  
13 the opposite for the headquarter in the non-repealer state?  
14 I mean --

15 MR. RAITER: It would be -- yeah, if they were  
16 apples to apples in terms of how they acquire finance and run  
17 their business, it would be inconsistent, but I think as I  
18 tried to indicate and I may not have done so clearly, not  
19 every dealership group operates that way. So some of them  
20 operate essentially on an individual dealership-by-dealership  
21 basis even though there is a parent umbrella of some kind of  
22 a group, so it would really be a claim-by-claim basis. If  
23 they say, you know, we acquired these vehicles in a repealer  
24 state and we, the repealer state dealership, had the  
25 liability, had the financing, then we would view that to be a

1 valid claim.

2 THE COURT: Okay. So --

3 MR. RAITER: But --

4 THE COURT: There are dealership groups, you are  
5 saying, that may -- the headquarters may be in a repealer  
6 state -- let's see, in a repealer state, and they may not  
7 bring in their dealerships in non-repealer states if those  
8 dealers kind of operate independently?

9 MR. RAITER: Exactly. So what we did because this  
10 was a kind of concern, we want to be fair, we want to make  
11 sure people who are legitimate claimants here make the claim  
12 and get paid and those that aren't don't, so we did ask some  
13 of the larger dealership groups that are headquartered in  
14 repealer states who would like to make a claim for  
15 non-repealer state dealerships, we asked them for information  
16 about their operation, we followed up and said can you tell  
17 us how do you finance, how do you acquire, how do you do  
18 this, how do you do that, so the claim administrator and the  
19 allocution consultant had enough information to basically say  
20 yes or no on a claim-by-claim basis.

21 THE COURT: And that makes a lot of sense to me.  
22 I'm a little bit concerned because I don't think that's  
23 explained in the order that you are looking at, these --  
24 individually, it sounds in the order just that they would all  
25 be under the headquarters and --

1                   MR. RAITER: Yeah, well --

2                   THE COURT: Let me tell you why I'm concerned if  
3                   that were the case, which you are telling me that it is not,  
4                   that there may be a conflict of interest amongst -- for you  
5                   amongst the plaintiffs because obviously the more claimants  
6                   you have, the less money for each individual claimant, you  
7                   see what I am saying?

8                   MR. RAITER: Yes, I understand what you are saying.  
9                   So if you look at the revised order that we provided  
10                   following input from defense counsel, or at least Mr. Cherry  
11                   and some of the other lawyers for the defendants where they  
12                   added some language and we agreed on some things --

13                   THE COURT: Okay.

14                   MR. RAITER: -- we did add a paragraph that would  
15                   obviously allow the claim administrator to communicate with  
16                   claimants who had made a timely claim and communicate with  
17                   them and basically set out this process to say if you fall  
18                   into one of these categories potentially and you did not make  
19                   a claim, please provide us this information and we can then  
20                   assess whether your claim should be altered in some way.

21                   THE COURT: Okay.

22                   MR. RAITER: The idea is that we would communicate  
23                   with them.

24                   THE COURT: You are talking about paragraph 4?

25                   MR. RAITER: Yes.

1                   THE COURT: And basically you're saying if they  
2 have not already done so, such dealership would be allowed  
3 30 days to provide information about new vehicle acquisitions  
4 or sales in non-repealer states, that's the paragraph that  
5 you are relying on; is that right?

6                   MR. RAITER: Yes, and what we would do then is  
7 Gilardi & Company would send out essentially a notice saying  
8 this is the order of the Court, in order -- if you are  
9 interested in making such a claim -- there aren't a lot of  
10 dealerships in this situation by the way, you know, we are  
11 kind of dealing with a very minority of the potential  
12 claimants here, but we want to be fair to everyone and we  
13 want to make sure that money is allocated appropriately so we  
14 would send that out and be very specific with them about what  
15 we are looking for and what the claim administrator and the  
16 allocution consultant would want to see in order to make that  
17 determination for those particular dealerships.

18                   MR. DONOVAN: Your Honor, this is David Donovan at  
19 Wilmer Hale on behalf of Denso. Mr. Cherry couldn't be on  
20 the call today.

21                   I wanted it to be clear that our comments on the  
22 proposed order on behalf of Denso and as far as I know on  
23 behalf of any other settling defendants were not with respect  
24 to the allocation plan at all. The only comment we made was  
25 to make it clear that whatever allocation plan was agreed on

1      here would not be precedent for allocation to any auto dealer  
2      in a non-repealer state in any other matter.

3                    THE COURT: Okay.

4                    MR. DONOVAN: We don't have a position on how the  
5      auto dealers allocate these funds.

6                    THE COURT: So your comment to the order had to do  
7      with that next paragraph, 5, about the other parts, right --  
8      or other settlements?

9                    MR. DONOVAN: Correct, Your Honor. We didn't make  
10     any comment about information that shouldn't be provided to  
11     their experts or consultants to determine who should or  
12     should not get this money, we did not have any comment in  
13     that regard.

14                  MR. RAITER: And I'm not suggesting that you did,  
15     but we provided the order, the proposed order to defense  
16     counsel and took the edits that they proposed to us and  
17     incorporated them.

18                  THE COURT: Okay. I really wasn't concerned about  
19     defense counsel because I know this didn't affect them in  
20     terms of the amount of the settlement, but I was concerned  
21     about any conflict that might exist between plaintiffs but I  
22     think you have explained it pretty clearly.

23                  Just hold on for a second, please. Okay.

24                  I was pulling out this order and in looking at this  
25     the question is if you have headquarters in a repealer

1 state -- in a non-repealer state, okay, and then you have --  
2 you have dealerships in repealer states, are those  
3 dealerships automatically able to file claims? I mean, what  
4 if they had the same -- the same protocol as your other  
5 headquarters that are in these repealer states? Did I make  
6 that clear? I know this gets confusing.

7 MR. RAITER: I think I know what you are saying.  
8 You are saying if, in fact, the dealership group acquires  
9 vehicles centrally and the place of injury is in a  
10 non-repealer state, I believe the claim determination would  
11 be that even though dealerships in the repealer states in  
12 that group would not have a valid claim because --

13 THE COURT: Okay.

14 MR. RAITER: -- the liability and risk of injury  
15 resides elsewhere.

16 THE COURT: That's exactly what I wanted to be sure  
17 of. All right. So I understand that. I think I would like  
18 some -- something in writing about how this is done,  
19 something a little more, either a -- I know the declaration  
20 from Gilardi goes only to the repealer state, but could you  
21 clarify that declaration with what you just told me?

22 MR. RAITER: Sure. In terms of how we expect the  
23 claims to be handled?

24 THE COURT: Right, right, you know, or you could do  
25 a separate -- just a little separate document. I think it is

1           probably a good thing for this to be on the record publicly.

2           MR. RAITER: Sure, sure.

3           THE COURT: Your explanations are exactly what I  
4 hoped to hear, but it is not clear just from this order, so  
5 if we had a supplement in the motion, that would be good.

6           MR. RAITER: Okay. We can do that.

7           THE COURT: Okay. If you would do that and then  
8 let me know and I will sign the order.

9           MR. RAITER: Great. Thank you, Your Honor.

10          THE COURT: Okay. Is there -- Mr. Donovan, do you  
11 have anything else that you want to say?

12          MR. DONOVAN: No, Your Honor.

13          THE COURT: Okay. Anybody else?

14          (No response.)

15          THE COURT: No. Okay. All right. Thank you very  
16 much. I appreciate it.

17          MR. RAITER: Thank you.

18          THE COURT: Bye-bye.

19          (Proceedings concluded at 1:18 p.m.)

20                            -     -     -

21

22

23

24

25

## CERTIFICATION

I, Robert L. Smith, Official Court Reporter of  
the United States District Court, Eastern District of  
Michigan, appointed pursuant to the provisions of Title 28,  
United States Code, Section 753, do hereby certify that the  
foregoing pages comprise a full, true and correct transcript  
taken in the matter of In Re: Automotive Parts Antitrust  
Litigation, Case No. 12-02311, on Tuesday, July 25, 2017.

*s/Robert L. Smith*  
Robert L. Smith, RPR, CSR 5098  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

17 || Date: 08/02/2017

18 Detroit, Michigan